

2003-360

MEMORANDUM

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DEC 01 2003

Executive
Director's Office

DATE: 28 November 2003

TO: Mr. Thomas Dorman

FROM: Robert Marango

SUBJECT: Doe Valley Water Plant

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PUBLIC UTILITY
COMMISSION

Dear Sir,

It seems that every week I get a 3 or 4 page memo, about the water plant issue here in Doe Valley. I have enclosed the latest plus a "preference survey" sent to me. I am extremely disappointed about the wording of the 2 choices "control our destiny" or "remain under PSC jurisdiction". It would seem logical to spread out the cost of a water system over all of the citizens of the county and not have many separate plants, including a separate one here in Doe Valley.

An outsider might think there was some type of racketeering going on here. Anyway, I have voted to be part of the Meade County water system.

Sincerely
Robert and Mary Marango
147 Tanager Doe Valley
Brandenburg, KY. 40108

One property owner's perspective on issues concerning Doe Valley Lake 11/22/03

Dear Doe Valley property owner,

I have been a Doe Valley home owner since 1980, but, except for taking part in our annual elections, I have been relatively uninvolved in the decisions that concern the Doe Valley Property Owners Association (DVPOA). That changed a few years ago when I came to understand the significance of our continued use of Doe Valley Lake as our source of drinking water (if you do not know me or my previous professional experience, please see the post script at the end of this letter). I had always been aware of the high quality and good taste of our spring and surface water based system when compared to the drilled well based systems of all the nearby communities. I also knew that we enjoyed lower home insurance rates due to our higher fire rating than exists in the county's systems. Only more recently, however, I began to appreciate how many of our environmental protections and controls over the surrounding (upstream) commercial development are directly related to the fact that we use Doe Valley Lake as our source of drinking water. In the last few years, when it became very clear that we urgently needed to expand our treated water capacity, concerned property owners began to meet in small groups. They met to discuss the various alternative courses of action before us and their probable impacts on our: independence / continued control of our future development, costs, water quality / health, fire protection, natural environment, and surrounding commercial development. I attended the property owners' meetings graciously hosted by my neighbors Mike and Betty Campbell, and which were also attended by our current DVPOA board president, Judi Deppen. At these meetings, they also expressed concern over the integrity and motivations governing our previous general manager's actions which ran contrary to the interests of Doe Valley property owners, especially his consideration of purchasing water from an outside source. Since he had just conducted a written property owner survey which clearly indicated our strong desire as a community to continue using Doe Valley Lake as our source of drinking water, I too questioned his trustworthiness to work in the property owners' interest and I joined the effort to remove him as manager.

I wouldn't begin to presume that I know or understand all the facts, let alone their ramifications, surrounding the use of our lake. As a property owner, I do consider myself to be fairly well informed on the subject, however, and in the remainder of this letter I would like to address some of the issues as I understand them. Many significant actions and decisions, concerning the use of our lake and our community's future, have occurred since those early home-based meetings. What follows is just a brief overview. The Doe Valley Utilities Study Group was formed to study the many factors related to our future drinking water needs and to identify alternative solutions. This was an all volunteer group, composed of Doe Valley property owners with a broad range of experience, dedicated to the study's purpose. Upon completion, property owners were provided extensive written and oral summaries of the study group's findings and recommendations. A property owner's preference survey was conducted which included the respondent's first, second, and third choices of all the identified alternatives. When Brenda Knott and I analyzed the survey results, one preference came through loud and clear: property owners wanted to continue to use Doe Valley Lake as their source of drinking water. Almost no one (less than two percent) wanted to purchase water from an outside source. In the following months, several updated progress reports and presentations were provided to the community. Both the Doe Valley Utilities (DVU) and the Property Owners Association (DVPOA) boards received the study group's input. They also received multiple briefings, presentations, and on-site tours from government agencies, engineers, contractors, suppliers, and other facilities concerning requirements and alternative solutions to our needs. Both the DVU and DVPOA boards unanimously approved a water plant expansion using a membrane technology system to meet the current and more demanding future water quality regulatory requirements. The Kentucky Division of Water (DOW) (water quality & engineering) approved our water plant expansion design. The equipment manufacturer had the first unit, to be used in the pilot project (on-site system testing), waiting on the loading dock for shipment at the end of last year.

After an intervention (Joe Dooley) and some delays, the Kentucky Public Service Commission (PSC) (financing & cost) disapproved our application to build and advised us that if we reapply, we should reconsider all our alternatives, including purchasing our water from the Meade County Water District. Furthermore, we should demonstrate why our preferred proposal is the "most feasible alternative". The state government has been advocating the regionalization or consolidation of small water companies into larger corporations to gain economies of scale and more efficient regulation. In our case, that would mean coming under the Meade County Water District and purchasing our drinking water from them. The PSC has clarified its definition of "most feasible alternative" to mean essentially "lowest cost alternative". In such a limited cost comparison, between our building a pipe line to the Meade County Water District and upgrading our water plant, we are likely to loose. The PSC is much less concerned, if at all, with the many factors that make the continued use of Doe Valley Lake, as our source of drinking water, our community's preferred choice. Even if we were prepared to take the chance that we might loose and to bear the cost of starting the lengthy process of application to the PSC over again from scratch, an approval would come too late to provide sufficient time to complete our construction. Before then we would be ordered by the PSC to purchase water from the Meade County Water District to meet our increasing demand for treated water.

Faced with these realities, a shortened time frame in which to act, and the impending stricter water quality regulatory requirements, the DVU and DVPOA took a simultaneous multi-pronged approach to the problem. Their purpose was to keep Doe Valley Lake as our source of drinking water whether we needed to operate as a public entity (under the PSC's jurisdiction) or as a private entity (not under the PSC's jurisdiction) to reach our goal. As a private utility with a DOW approved plan, we would not need PSC's approval and we could start construction immediately. The DVU's current status as a public utility is based solely on the fact that we provide water to six customers outside our otherwise private community. In order to give the DVU an opportunity to become a private utility, the DVPOA board of

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directors unanimously approved the use of a DVPOA lot, to be held in joint ownership with the water customers outside Doe Valley, and permitted the outside customers to become associate members of the DVPOA solely for the purpose of water service. They would have no other privileges unless they chose to pay full dues. To save time, the DVU has filed a multiple alternative petition, which is now before the PSC, to obtain a determination of whether DVU should be categorized as a public or private entity. The alternatives suggested in the petition clearly include both public and private entity solutions. The proposed public entity solution requests an exemption to the PSC construction certificate requirement, and the proposed private entity solution attempts to resolve the issues related to our six water customers outside of Doe Valley. Both address our highest priority: the continued use of Doe Valley Lake as our source of drinking water and the completion of our water plant expansion project as soon as possible.

Last week, however, the DVU learned that our proposed public entity solution, which requested an exemption to the PSC construction certificate, could not be approved. That leaves us with just two alternatives: a possible private entity solution or the high probability that we will be ordered by the PSC to purchase our drinking water from the Meade County Water District. The DVU also learned that our largest multiple lot property owner, Shannon Kiem, has been accepted by the PSC as an intervener. Her attorney's request for procedural considerations has already potentially delayed the proceedings and more delays may follow. Any delay at this time, when there is no time to spare, increases the risk that we will be ordered by the PSC to purchase our drinking water from the Meade County Water District. If those obstacles aren't enough, DVU learned that Lois Conn sent a letter to the PSC along with some petitions to the PSC and the DVPOA requesting a DVPOA meeting to consider conducting a community survey to get a consensus of whether or not Doe Valley should be under the PSC's jurisdiction. Although she claims to have just learned of the issue, a quick check of the DVPOA's resolutions or a call to a DVPOA member, before she wrote her letter to the PSC, would have quickly revealed that months ago they had carefully considered this issue and taken specific actions to make it possible for DVU to operate independently of the PSC's jurisdiction. They were acting on the mandate that the community had stated so clearly on several previous occasions: Keeping Doe Valley Lake as our source of drinking water is our community's highest priority. If the PSC decides that we should be categorized as a private entity, I seriously doubt that there are many Doe Valley property owners who would prefer to operate as a public entity under the PSC and be part of the Meade County Water District rather than to keep Doe Valley Lake as our water source and operate as a private entity independent of the PSC's jurisdiction. Many property owners do not know that Brandenburg is a nearby example of a water system that functions without being under the regulation of the PSC. In addition, if we are categorized by the PSC as a private entity, we have the right to determine whether we operate as a for profit or not for profit organization. In either case, our water system remains wholly owned by the Doe Valley property owners rather than shared (their water treatment plant) with the Meade County Water District. Whatever we do or don't decide as a community to spend on utilities, the important point to remember is that it is our decision and the expenditure is within Doe Valley. That will no longer be the case if we are ordered by the PSC to connect to the Meade County Water District where we will have a relatively small voice in a large system which is dedicated to serving customers mostly outside of Doe Valley

Lois Conn also cautions that "many are unaware that such a move (independent of the PSC's jurisdiction) would give the utility company 'unfettered' control". Such statements have lead some to speculate that if we were no longer under PSC jurisdiction, DVU could raise its employees' salaries to unreasonable levels. The implication seems to be that the PSC would prevent this from occurring. The PSC is not in the business of setting individual salaries. They are concerned with proper accounting and that the rates being charged are in line with the expenses being incurred. In fact DVU has had to raise its rates in the past to come more in line with PSC guidelines and the rates of the surrounding communities. It should also be noted that the DVPOA is also "unfettered" with regard to raising its employees' salaries to unreasonable levels. Our protections against such excesses are the same in both cases. The same ones we've seen before that keep our elected representatives working in our best interests: A personal code of responsive and responsible civil service; the Doe Valley by-laws; state and federal law; and, most importantly, vigilant, informed, and actively engaged property owners—our first and last line of defense.

What is perhaps most offensive is that many petition signatories were unaware of Lois Conn's intent to send their signatures to the PSC or the character of her letter, which erroneously represented DVPOA and DVU actions, and which she attached to the petitions. Ronnie Ables is among those who feel they were purposefully misled. He attended the DVU board meeting last Tuesday to express his outrage and to set the record straight. However well intentioned the signatories may have been, last week's petition to the PSC and the DVPOA board of directors, to reassess the option of becoming a private utility, constitutes a request to delay the process and, at this late date, greatly increases the risk that the PSC will order us to become part of the Meade County Water District.

The DVU board held an open meeting, to discuss these issues, on Monday, November 17, 2003. A record setting attendance of 111 property owners was recorded. Subject matter professionals were present to answer questions and a water customer preference survey was initiated.

What can be done now? First, we should try to accommodate our outside water customers' concerns where ever possible. Most want to stay as our customers and we should seek solutions to make that happen or help them connect to the Meade County Water District if that is what they prefer. Second, if you or someone you know signed the Lois Conn petition under a misunderstanding or misrepresentation, please be sure to set the record straight by responding to the DVU water customer survey as soon as possible. Also, if you or someone you know is in a position to favorably influence Shannon Kiem to act in the best interest of the Doe Valley community, please do so. You could start with the fact that Ed Kiem supported keeping Doe Valley Lake as our source of drinking water. Also, Shannon Kiem is taking a risk that she may be

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irrevocably ordered by the PSC to pay availability fees and loose what we pay her for our raw water intake, if we are found to be a public entity and ordered to purchase our drinking water from the Meade County Water District. If instead we are found to be a private entity, we can and should be held accountable for any written agreements we entered in good faith with her father.

When making important decisions, it is usually wise to err on the side of caution, and we have done just that, as a community, on multiple occasions throughout the long and sometimes torturous process that has characterized our water expansion planning process. We have often vigorously, even heatedly, debated the alternative courses of action our community might best take, but now the loss of our lake is at stake, an outcome that almost no one wants. This is not a time to wait and see if "someone" will ensure that our lake remains our source of drinking water in the future. **Please take it upon yourself to do what you can** to ensure that the water plant expansion project is not further delayed and that it remains our community's highest priority until we have a functioning new water plant.

Your active participation is urgently needed. Here are some ways you can help:

- **Respond Immediately to the Doe Valley Utilities' preference survey. Ask other property owners to do the same.**
- **Personally petition the PSC** (see P.P.S.): Kentucky Public Service Commission, Executive Director: Mr. Thomas Dorman, P. O. Box 615, 211 Sower Blvd., Frankfort, Kentucky 40602-0615, Phone: 502.564.3940 Fax: 502.564.3460, E-Mail: Thomas.Dorman@mail.state.ky.us
- **Attend all DVU and POA board meetings. Ask other property owners to do the same.**
- **Call or visit other property owners You Know** who may be concerned about Doe Valley Lake as our water source and who may have missed Monday's water meeting. Read or show this letter and other related information to them and discuss the issue.
- **Mail, Fax, or Email other property owners You Know** who may be concerned about Doe Valley Lake as our water source and who may have missed Monday's water meeting. Send them a copy of this letter and other related information then discuss the issue with them.
- **Volunteer To Help other concerned property owners call, visit, or distribute information to property owners You May Not Know** who may have missed Monday's water meeting. Provide information and discuss the issue with them.
- **Frequently visit doevalley.org and click on the "urgent" tab to obtain updated information you can act on and share with others.**

If in the near future we are ordered by the PSC to connect to the Meade County Water District, you may truthfully say that you didn't fully understand all the implications that each alternative course of action before us entailed (no one ever makes a decision with perfect knowledge, but each of us must seek out all the information we need, to some practical limit, and then act on the informed decisions we must make to carry out our responsibilities as community members). Or, you may rightfully lament the loss of our high quality water, a particular environmental or commercial development protection, or the ability to make decisions for ourselves by ourselves. Or, you may understandably resent the imposition of higher fees to fund construction, in another part of Meade County or even in some other county, in a regionalized water system where our voice is relatively small. However, if you have read and understood what I have written here, there are some things you will not be able to truthfully say in the future: "No one warned me of the great risk of loosing our lake as our source of drinking water" or "I didn't realize there was a connection between the source of our drinking water and our environmental protections, the surrounding commercial development, and our independent ability to make decisions about the development of Doe Valley's future" or "I didn't know one more small delay could be so devastating to our interests" or "No one told me that my participation was urgently needed" or "No one told me what I could do to help." If you have been actively supporting Doe Valley Lake as our drinking water source, thank you.

Sincerely, your fellow property owner and Doe Valley Lake supporter,  James Anthony, 143 Piping Rock Road

P.S. Issue related / professional experience: Volunteer Doe Valley Utilities study group member and consultant, developed and analyzed the most recent Doe Valley utility customer survey, retired military hospital controller (program & budget, work load, staffing, cost / benefit analysis, management information systems, and policy), Syracuse University MBA (management, public / government systems), etc.

P.P.S. PSC petition example paragraph (remember our only issue before the PSC now is whether we remain a public entity [very likely to result in an order to purchase our drinking water from the Meade County Water District] or we become a private entity [may result in the successful construction of our water plant expansion and our continued use of Doe Valley Lake as the source of our drinking water]):

I am a property owner and water customer in the subdivision of Doe Valley, a community located near Brandenburg, Kentucky. Our proposed plan for water plant expansion, to meet the needs of our community, has been approved by the Kentucky Division of Water. I am concerned that actions contemplated by the Kentucky Public Service Commission may jeopardize the continued use of Doe Valley Lake as my community's source of drinking water. The continued use of this valuable natural resource as my community's source of drinking water is very important to me. I believe this should be my community's highest priority among the many factors concerning our water supply. An overwhelming majority of my fellow property owners have repeatedly expressed this strongly held position to both Doe Valley Boards of Directors either directly or through at least two formal surveys. I hereby formally petition the Kentucky Public Service Commission to facilitate my community's continued use of Doe Valley Lake, as our source of drinking water, by finding that Doe Valley Utilities Inc. may operate as a private entity independent of the Kentucky Public Service Commission's jurisdiction.

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November 25, 2003

WE NEED YOUR INPUT! PLEASE READ THE FOLLOWING AND VOICE YOUR PREFERENCE.

On November 17, 2003 approximately 111 people, eager to hear news on the water treatment plant, attended the Utility Board meeting. Gerry Lynn, Joe Nepi, Trent Decker and David Smith represented the Utility Board. Also present were Phillip Shepherd, Counsel for Doe Valley Utilities (DVU); Chuck Andersen, Engineer on the project; Mike Krebs, Contractor for the project; and Sarah Kinsman, Counsel for Shannon Keim. The key point of the meeting was whether DVU should be required to operate as public entity [under Public Service Commission (PSC) jurisdiction] or allowed to operate as a private entity [not under PSC jurisdiction]. In short, DVU is waiting for a PSC ruling on jurisdictional status (are we a public utility or private utility). If the PSC rules DVU is a private utility, we could begin construction on the plant. If DVU is determined a public entity, it is most likely we will be required to purchase water from Meade County Water District. The PSC Order of May 1, 2003 stated, "If Meade County Water District has the hydraulic capabilities to serve Doe Valley, it is the Commission's opinion that this option should be the most feasible solution." Other issues discussed were future regulatory requirements for small water systems, controlling rates, the election of utility board members by customers, and conventional vs. Membrane technology. The Utility Board has already taken measures to keep rates in check by passing a resolution stating a majority of both the POA Board and the Utility Board must approve any rate hike. If the DVU is deemed to be a private utility, the Utility Board will consider becoming a non profit organization. The Utility Board would like to thank all customers who were in attendance. They would also like to thank all guests answering technical and legal questions. If you did not attend, but would like to have information distributed to the board, please come by or call the office. DVU will keep all customers informed of current actions via newsletter and our website, www.doevalley.org. If you have any questions, please call the office (422-2188) or any of the Utility Board members.

PLEASE COMPLETE AND RETURN THE FOLLOWING SURVEY CARD

****Please return no later than December 3, 2003.****

DOE VALLEY UTILITY CUSTOMER PREFERENCE SURVEY

<input type="checkbox"/> Control our Destiny - Build our own Treatment Plant Use Doe Valley Lake as our Primary Water Source - Become a Private Entity, Independent of PSC Jurisdiction	Please detach this customer preference survey and return no later than Dec. 3, 2003
<input type="checkbox"/> Remain under PSC jurisdiction (Public Entity) Obtain our Water From Outside Doe Valley (Brandenburg or Meade County)	
_____ Signature	_____ Date